Supreme Court, U.S.
FILED
OCT 24 2000
OFFICE OF THE CLERK

No. 00 674

**In The**
**Supreme Court of the United States**

---

**Linda Jones,**
**Petitioner,**

**v.**

**Bayer Corporation,**
**Respondent.**

---

**On Petition for Writ of Certiorari**
**To the United States Court of Appeals**
**For The Eleventh Circuit**

---

# PETITION FOR WRIT OF CERTIORARI

---

**Clifford H. Hardwick**
**Attorney for Petitioner**
**Roswell Professional Park**
**Suite E-1**
**11205 Alpharetta Highway**
**Roswell, Georgia 30076-1442**
**(770) 772-4700**

---

3 pp

## QUESTIONS PRESENTED FOR REVIEW

**The case *sub judice* arises out of a claim of alleged sexual discrimination and harassment pursuant to 42 U.S.C. 2000(e). The Petitioner was a female employee of the Respondent. For several months she made complaints through the Human Resources Department of the Respondent of sexual harassment and sexual discrimination. Petitioner was advised by the Human Resources representative that she did not need to file any formal complaints and a resolution of the matter was agreed upon wherein the Petitioner was given a lateral transfer and placed under different management. However, after the 180-day period of limitations had expired, Petitioner was called into a conference with the same Human Resources representative and the area director. During that meeting, the company revived the same claims against the Petitioner that they had used as a defense in the sexual harassment suit and brought forth many of the same issues. The meeting was so hostile that Petitioner became emotionally upset and resigned her position.**

**The questions presented, therefore, are:**

**1. Whether the 180-day time limit set forth in 42 U.S.C. 2000 e-5(e) acts as a bar to recovery even though the employer has announced a settlement with the employee and revives the very same complaints and allegations after the 180-day period has expired.**

**2. Whether the company's action in reasserting the same complaints and allegations covered in the settlement with the employee on sexual harassment matters constitutes a new act of sexual harassment enabling the employee to proceed and incorporate the original complaints.**

## PARTIES TO THE PROCEEDING

**Pursuant to Rule 14.1(b) and Rule 29.6 the following is a list of all parties to the proceedings:**

**Linda Jones, Petitioner**
**Bayer Corporation, Respondent**

---

## CITATIONS ENTERED BY THE COURTS BELOW

**Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981a**

**Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)**

**Avirgan v. Hull, 932 F.2d 1572 (11th Cir. 1991), cert. denied, 502 U.S. 1048, (1992)**

**Calloway v. Partners Nat'l Health Plans, 986**

F.2d 446, 448 (11th Cir. 1993)

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)

Hill v. Seaboard Coast Line R.R., 885 F.2d *804*,. 809-10 (11th Cir. 1989)

Jones v. USA Petroleum Corp., 20 F.Supp. 2d 1379 (S.D. Ga. 1998)

Kilgore v. Thompson & Broch Management, Inc., 93 F.3d 752, 754 (11th Cir. 1996)

Llampallas v. Mini-Circuits Lab., Inc., 163 F.3d 1236 (11th Cir. 1998)

McCarthney v. Griffin-Spalding Bd. of Educ., 791 F.2d 1549, 1550-51 (11th Cir. 1986)

Merritt v. Dillard Paper Co., 120 F.3d 1181 (11th Cir. 1997)

Morgan v. City of Jasper, 959 F.2d 1542, 1548 (11th Cir. 1992)

Olmsted v. Taco Bell Corporation, 141 F.3d 1457 (11th Cir. 1998)

Raney v. Vinson Guard Serv., Inc., 120 F.3d 1192, 1997 (11th Cir. 1997)

St. Mary's Honor Center v. Hicks, 509 U.S. 502, 511 (1993)

**Smith v. Horner, 839 F.2d 1530. 1538 (11th Cir. 1988)**

**Stone v. Galaxy Carpet Mills, Inc., 841 F. Supp. 1101, 1186 (N.D. Ga., 1993)**

**Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981)**

**Thrasher v. State Farm Fire & Casualty Co., 734 F.2d 637 (11th Cir. 1984)**

**Thurman v. Robertshaw Control Co., 869 F. Supp. 934, 942 (N.D. Ga. 1994)**

**United Air Lines, Inc. v. Evans 431 U.S. 553, 558-60 (1977)**

**Walker v. Mortham, 158 F.3d 1177, 1186 (11th Cir. 1998)**

**Webb v. Cardiothoracic Surgery Associates, 139 F.3d 532 (5th Cir. 1998)**

**Young v. General Foods Corp., 840 F.2d 825 (11th Cir. 1988), cert. denied, 488 U.S. 1004 (1989)**

---

## TABLE OF CONTENTS

Page

QUESTIONS PRESENTED. . . . . i

OPINIONS BELOW . . . . . 1

JURISDICTION. . . . . 1

STATUTES INVOLVED IN THIS CASE . . . 2

STATEMENT OF THE CASE. . . . . 3

REASONS FOR GRANTING THE WRIT . . 14

CONCLUSION. . . . . .22

## TABLE OF AUTHORITIES


| Cases | Page |
|---|---|
| Fleming v. Boeing Co., 120 F.3d 242, 245 (11th Cir. 1997) ..... | 20 |
| Fowler v. Sunrise Carpet Industries, 911 F.SUPP., 1560, 1575 (N.D. Ga. 1996) ..... | 18 |
| Henson v. City of Dundee, 682 F.2d at 905 (11th Cir. 1982)..... | 18 |
| Kilgore v. Thompson & Brock Management, Inc., 93 F.3d 752-753-754 (11th Cir. 1996)... | 21 |
| McCoy v. Macon Water Authority, 966 F.SUPP. 1209, 1217-18 (M.D.Ga. 1997)..... | 20 |
| Reynolds v. CSX Transportation, 115 F.3d 860, 866 (11th Cir. 1997)..... | 21 |
| Sparks v. Pilot Freight Carriers, 830 F.2d 1554, 1556 (11th Cir. 1987)... | 18 |

**Statutes and Rules**

| | |
|---|---|
| 42 U.S.C. 2000e-5(e)..... | 2 |

## PETITION FOR WRIT OF CERTIORARI

**Linda Jones respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in this proceeding on July 27, 2000.**

---

## OPINIONS BELOW

**The opinion of the United States Court of Appeals for the Eleventh Circuit that gives rise to this petition is a published opinion. It is reprinted in the Appendix hereto at page 1.**

**The opinion of the United States District Court for the Northern District of Georgia that gave rise to the appeal to the United States Court of Appeals for the Eleventh Circuit is a published opinion. It is reprinted in the Appendix hereto at page 2.**

---

## JURISDICTION

**On the 17th day of August, 1999, the United States District Court for the Northern District of Georgia, Atlanta Division, entered an order granting summary judgment to Respondent and a final judgment was issued by the court on the same day.**

**Petitioner timely appealed to the United**

**States Court of Appeals for the Eleventh Circuit. On June 27, 2000, the United States Court of Appeals for the Eleventh Circuit issued a published opinion affirming the District Court's judgment.**

**The judgment of the Court is invoked pursuant to 28 U.S.C. § 1254(1).**

---

## STATUTES INVOLVED IN THIS CASE

**42 U.S.C. 2000e-5(e) states, "Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency.**

**(1) A charge made under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the**

**person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.**

**(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title [42 USCS § @ 2000e et seq.] (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system."**

---

## STATEMENT OF THE CASE

**Petitioner was an employee for Respondent corporation (formerly Miles, Inc.), as a pharmaceutical sales representative from May of 1991 through June of 1996. Her position required her to work a territory in the state of Mississippi. Under the management structure she was assigned as part of a regional sales team under the management of George**

**Stamboulieh. Bill Corley was the divisional manager.**

**Each of the pharmaceutical reps worked their own territory, and they were required to attend weekend sales meetings from time to time. (R-40, Deposition of Stamboulieh, p. 27, ll. 21-25) The sales reps would only see each other three or four times a year. (R-40, Deposition of Corley, p. 29, ll. 1-4)**

**During the sales meetings, the sales reps were normally required to go to Jackson, Mississippi, but meetings were sometimes held in other locations, including Florida and Tennessee. (R-40, Depo. Of Stamboulieh p. 27, ll. 13-18; p. 129, ll. 7-16) These meetings were generally two days long. (R-40, Depo. Of Stamboulieh, p. 28, ll. 4-8)**

**Stamboulieh required the sales reps to travel to Jackson, Mississippi on the day before the sales meetings. Although Respondent contends that this was a company rule that applied to all except those who lived in and around Jackson, it was not a company rule, nor was it applied uniformly to all. All females were required to stay overnight in the motel. Three male employees were given permission not to spend the night in the motel. (R-32, Depo. of Petitioner, p. 34, ll. 5-16) One of the female reps lived close to Jackson, but she was still required to attend the overnight sessions. (R-32, Depo. Of Petitioner, p. 34, ll. 21-22)**

**On the night before the sales meeting, the female employees were required to go to dinner with Stamboulieh. (R-32, Depo. Of Petitioner, p.**

**26, ll. 7-15) The women were referred to as "George's harem" by Stamboulieh, and they were encouraged to go out after the dinner drinking and socializing with Stamboulieh and the male sales reps. (R-32, Depo. of Petitioner, p. 26, ll. 7-15; p. 35, ll. 15-24; p. 44, ll. 11-22) When the Petitioner did not go out and socialize, she received a bad evaluation. (R-32, Depo. of Petitioner, p. 35, ll. 19-24; p. 36, ll. 2-11; Depo. Of Stamboulieh, p. 94, ll. 19-25; p. 95, ll. 1-25) Stamboulieh complained to Corley that Petitioner didn't want to interact with other division members. (R-40, Depo. of Corley, p. 36, ll. 1-2; p. 38, ll. 3-7) On one or more of these occasions, the invitation included the female sales reps joining the men for trips to strip clubs. (R-40, Depo. of Petitioner, p. 26, ll. 22-25)**

**During the sales meetings, the male reps, as well as Stamboulieh and Corley, would make inappropriate comments and tell dirty jokes. The men would openly comment on the body parts and qualities of the strippers. Other inappropriate jokes were made on a racial or ethnic basis. This was done with the encouragement and/or approval of Stamboulieh and Corley (when he attended the meetings). (R-32, Depo. of Petitioner, p. 57, ll. 15-25; p. 58, ll. 1-5; p. 61, ll. 9-25)**

**Petitioner, who is a divorced mother of a minor child, objected to the unnecessary overnight stays, but complied, went to the dinners and even socialized after dinner some because it was required by her managers. She**

**did not go to the strip clubs.**

**The employees were also required to attend Corley's Christmas party. When in 1993 the Petitioner could not attend because of health, Corley made comments to other employees about why she missed the party and chastised her. In fact, the Petitioner was expected to spend her after-work hours socializing with her male co-workers. (R-40, Depo. of Stamboulieh, p. 108, ll. 8-25)**

**During her time with the corporation, the Petitioner was a highly successful sales rep. This is evidenced by the fact that she was the highest salaried representative (male or female) in her division. This was in a position that was mostly commission. (R-47, Respondent's Statement of Undisputed Facts Par. 29) She was consistently at or above quota; and, in 1993, won membership in the President's Club (an award based on a representative's sales performance). For winning the President's Club, the winners were sent to Hawaii for a convention. The winners could take their spouses or a "significant other." The Petitioner requested that she be allowed to take her daughter rather than an adult male. At first, she was told by Stamboulieh and Corley that she could not take the daughter and that she would have to take an adult. Finally, after repeated requests, the company granted Petitioner an exemption and allowed her to bring her child. (R-32, Depo. of Petitioner, pp. 72-74)**

**Throughout her career with the Respondent, Petitioner sought to move up into**

mamagement. She let her desire for promotion be known, and tried to earn consideration. Therefore, when she was dropped in her annual rating by Stamboulieh and Corley she became very concerned. According to Stamboulieh and Corley, Petitioner would have to be rated a "4" on two consecutive annual reports before she could be considered for promotion (other than the promotion from PSR I to PSR II which is more a matter of longevity).

The reason for the drop in Petitioner's rating was Stamboulieh's opinion that she wasn't socializing enough with her fellow workers and that she didn't establish close enough relationships with a male sales rep, Mike Sharp. Mr. Sharp held the position of HSS and worked hospitals. This was not the same territory that Petitioner worked, and HSS was generally considered to be a promotion from PSR. (R-32, Depo. of Petitioner, pp. 50-51; R-40,, Depo. Of Stamboulieh, p. 93, ll. 4-13)

Stamboulieh openly encouraged the female employees to drink alcoholic beverages and "loosen up." (Depo. of Petitioner, p. 27, ll. 4-11; p. 40, ll. 5-25) With at least one female employee (Wood), he suggested on more than one occasion that the employee use marijuana. (R-40, Depo. of Tracy M. Wood in Ridgway v. Milles, Case No. 93-33-5-III, Chancery Court for Davidson County, Tennessee, p. 33, 3-12) On several occasions he would place women employees in questionable or embarrassing circumstances and refuse to support the employee. For example, Wood was taken by

**Stamboulieh when he picked up a doctor who was to be a speaker at a dinner. Wood was required to sit beside the doctor in the car and later at the dinner table. The doctor openly made numerous attempts to fondle Wood, and management did nothing to stop this behavior. (R-40, Depo. of Tracy M. Wood in Ridgway v. Miles, Case No. 93-33-5-III, Chancery Court for Davidson County, Tennessee, pp. 49-50) Wood was chosen to be the only female among two male reps and Stamboulieh at a medical convention. While the group talked with two doctors, the doctors started making sexually offensive comments about condoms, etc., and statements to the effect of "all you (female sales reps) want is sex." Although the comments were clearly inappropriate and offensive, Stamboulieh did nothing to protect his female employees nor to stop this type of conduct. Through his silence, Stamboulieh encouraged this type of behavior. (Depo. of Tracy M. Wood in Ridgway v. Miles, Case No. 93-33-5-III, Chancery Court for Davidson County, Tennessee, pp. 50-51)**

**The divisional manager was no help either. Bill Corley openly stated at one of the company's meetings that women were good for only one thing. The clear indication was that to the divisional sales manager women were only good for sex and not as workers. (R-40, Petitioner's affidavit, exhibit No. 1) Corley's highly offensive and sexist style of management is set out very well in the suit filed by another female sales rep in 1993, that being the case of**

**Kimberly S. Ridgway v. Miles, Inc., and Bill Corley, Civil Action File No. 93-33-5. Chancery Court for Davidson County, Tennessee. (R-40, Petitioner's Exhibit 5)**

**Stamboulieh wasn't the only manager for the Respondent to encourage alcohol consumption and loosening up of the female employees. Clearly Corley's attitude as to what females were good for was the expected conduct within the division, and this was known to the company. If the company didn't know about it prior to 1993, it was certainly put on notice on November 9, 1993, when the Ridgway suit was filed. Yet, there was no change in the way females were treated within the sales division. However, the Petitioner did complain to the Human Resources Department long before her termination.**

**Petitioner discussed the problems with sexual harassment and discrimination with Stamboulieh, with an EAP counselor, and with Laura Collins. (R-32, Petitioner's Depo., p. 13, ll. 2-23; p. 8, ll. 12-24) Ms. Collins advised the Petitioner that a formal complaint was not necessary (R-32, Petitioner's depo., p. 8, ll. 20-21), and that since she was typing into her computer as Petitioner was talking, a written complaint was not necessary. (R-32, Petitioner's depo, p. 11, ll. 17-20) Respondent says, for purposes of this litigation, that no written complaint was ever filed.**

**Because of the pattern of conduct by Stamboulieh and Corley, when she was dropped in her annual evaluation because of her failure**

**to meet Stamboulieh's expected level of socializing, Petitioner asked for a meeting with Stamboulieh, Corley and a representative from Human Resources. That meeting occurred on November 6, 1994, at Corley's office in Tennessee. The Human Resources rep was Laura Collins. (R-47, Respondent's Statement of Undisputed Facts No. 18; R-40, Petitioner's affidavit exhibit 1)**

**Several matters were discussed, including that Petitioner felt she was being sexually discriminated against. An agreement on solving some of the problems was reached, and Laura Collins later memorialized part of (but not all ) the topics agreed upon. The one thing neither Stamboulieh, Corley nor Collins would identify with any clarity was what they expected of socializing or to "improve the rapport with another employee." Accordingly, Petitioner sent e-mail follow-ups to seek this clarification. Rather than clarify, Corley and Stamboulieh used this as another method of degrading and downgrading Petitioner. (R-32, Petitioner's depo., p. 168, ll. 6-22; p. 169, ll. 13-20; R-40, Stamboulieh depo. P. 137, ll. 13-25; p. 144, ll. 2-18; R-40, depo. of Corley, p. 45, ll. 4-20; p. 60, ll. 6-25)**

**In 1995 Stamboulieh and Corley were transferred and Petitioner was assigned to work under a new manager. However, the damage and harassment did not stop. Stamboulieh and Corley had already poisoned the Petitioner's reputation within the company. Even though Respondent admits that Petitioner was very**

**good at her job, she was not considered for promotions within her division. Finally a position in Houston, Texas, became open and Petitioner applied. She advised her manager that she had put her home on the market in anticipation of the promotion. (R-40, Petitioner's affidavit exhibit 1)**

**During this period the Petitioner was contacted by an attorney for the Respondent. The Ridgway suit had been filed, and a request by plaintiff's counsel had been made. The request was that Petitioner volunteer to give a deposition in that case. Petitioner refused to volunteer; and she asked, if subpoenaed, would she get in trouble with the company if she told the truth. The attorney for the Respondent laughed and told her not to worry, that it would be hard for the other side to serve a subpoena in Mississippi. Petitioner was subsequently served and testified truthfully in that case. (R-40, Petitioner's affidavit, exhibit 1; R-47, Respondent's Statement of Undisputed Facts No. 44)**

**After her testimony in Ridgway, Petitioner was denied the promotion to Houston. The alleged reason was that she was "agitated" during the interview and that the best man was hired. The position was given to a man (Mr. Rambo). (R-23, Respondent's Statement of Undisputed Facts Par. 52-55) Respondent argues that Rambo was a strong performer and that was why he got the promotion. However, the Petitioner had been a constantly high performer. In fact, there is no mention of Rambo having**

ever qualified for the President's Club or ever exceeding the Petitioner's sales performance.

It was during the interview process that the employee socializing was again brought up. The Petitioner was asked to imagine that she was at a party where she would be standing. She was also asked if she was usually a "wallflower." The other reason, or core competencies, expressed by Respondent is that Rambo has strong interpersonal skills and team building–the same type of pop phrases used in the past to encourage socializing and drinking with the boys. (R-40, Petitioner's affidavit exhibit No. 1)

The timing of the interview is also suspect. Petitioner had only been assigned to this division for less than four months. Her evaluations had to have been based upon the old problems with Stamboulieh and Corley. No one else had sufficient time to work with her much less form an accurate evaluation. However, Stamboulieh did discuss with the manager Rosato Petitioner's not having good interaction with co-workers. (R-40, Stamboulieh depo. p, 148, ll. 13-15 Rosato admits he could not properly evaluate Petitioner, so he gave her the same rating that Stamboulieh had on the previous evaluation. (R-40, Depo. of Stamboulieh, pp. 148-149)

On June 28, 1996, Petitioner was sent to Dallas, Texas, for a meeting with the South Central Business Area Director, Ms. Conder-Flannery. Petitioner was advised that the meeting was for consideration for a promotion

(R-32, Petitioner's depo., pp. 100-101); but, according to Conder-Flannery, it was to advise the Petitioner of her deficiencies. It is interesting to note that, according to Respondent's brief and Statement of Undisputed Facts, the Petitioner never told anyone of her desire for a promotion. Yet, Conder-Flannery "became aware of Jones' interest in promotional opportunities. . ." (R-47, Statement of Undisputed Facts No. 58), and she was considered for at least three promotional opportunities (two of which were within the last six months of her employment).

When the Petitioner arrived at Conder-Flannery's office, she discovered that the same Laura Collins (from the Stamboulieh/Corley interview) was also present.

The meeting began with an attack on Petitioner along the same lines as the previous sessions with Stamboulieh and Corley. Petitioner did not socialize enough. She was not a team player. She did not work at building better relationships with her managers and co-workers. The meeting was extremely hostile, with Conder-Flannery talking in very derogatory and insulting tones to the Petitioner. (R-32, Petitioner's depo., p. 105, ll. 21-25; pp. 106-107)

The meeting was so hostile and Conder-Flannery's tone so upsetting that twice Petitioner got to her feet and advised Conder-Flannery that, if she did not stop talking to her in that manner, Petitioner was going to leave. When Conder-Flannery persisted in the same

**manner, Petitioner became visibly upset and left stating that she was quitting. (R-32, Petitioner's depo., p. 108)**

**Within two hours Petitioner had calmed down. She called her supervisor and requested that she be allowed to withdraw her resignation. The request was forwarded to Laura Collins, and the offer was rejected. Collins did, however, advise Petitioner that she was eligible for rehire. (R-32, Petitioner's depo., p. 109, ll. 12-20)**

**Petitioner was forced to find other employment, and she subsequently was relocated to Atlanta, Georgia. While in Atlanta, she saw ads run in the newspaper by the Respondent for PSR positions. She immediately applied. Although the Petitioner had approximately five years of strong experience with both the company and the product, was a past President's Club member, and a proven producer, she was never considered for any of the openings. According to Respondent, the Petitioner was not selected because either the ad had already produced too many applicants or she failed to attach a cover letter. It is undisputed that persons with far less qualifications were hired and she was not. Petitioner contends that this was clear retaliation. (R-47, Respondent's Statement of Undisputed Facts Nos. 75-80, 84-90)**

---

## REASONS FOR GRANTING THE WRIT

**1. Whether the 180-day time limit set forth in 42 U.S.C. 2000 e-5(e) acts as a bar to recovery even though the employer has announced a settlement with the employee and revives the very same complaints and allegations after the 180-day period has expired.**

**Petitioner's case is similar to that of a plaintiff in a civil action wherein she settles out of court prior to filing a law suit. Then after the statute of limitations has run on the cause of action the defendant violates the terms of the settlement and contends that plaintiff's claims are barred by the statute of limitations. However, there is one major difference for victims of sexual discrimination. Under normal tort and contract law, the plaintiff would have the right to bring an action for contempt or to enforce a settlement agreement. Here there is no such right.**

**The Respondent has argued, and the lower courts have agreed with Respondent, that there was nothing to prevent the Petitioner from filing a claim with the EEOC when the original and most outrageous acts were being committed. Technically this is true. However, the process set up by the Respondent was to go through its department of human resources, and the Petitioner did. Petitioner was told by the human resources representative that she did not need to file a complaint that it was being handled by that department. Shortly thereafter she was told**

**that she was being reassigned and that her concerns and complaints would be resolved through this move. For several months thereafter it appeared that Petitioner's complaints had been resolved and therefore there was no need to take any further action. Then, after the 180 day time period, Petitioner started to see the same old patterns, only this time not as blatant as the "harem" days.**

**This eventually came to a climax when Petitioner was called to a meeting with the South Central Business Area Director, Ms. Conder-Flannery, and Collins, from human resources. Petitioner entered the meeting with the understanding that its purpose was to interview her for a long awaited promotion. Instead it was a vicious attack on her for the very same things that were supposed to have been settled as part of her transfer. This included the same charges that she was not a team player because she didn't socialize and drink with her superiors or co-workers and that her interpersonal skills were satisfactory. In short, the Respondent had violated their agreement and, now that the 180 days had elapsed, was attacking the Petitioner using, in part, the same information contained in her file from the sexual harassment complaints she had made to Collins.**

**The argument has been made, and the lower courts have held that this action did not constitute additional acts of sexual harassment such as to allow the litigation of the prior acts. It was further argued that there was nothing to**

**prevent the Petitioner from filing a claim on the prior acts before the expiration of the 180 days. With all due respect, since the complaint had been settled, there was no basis to file the EEOC complaint until after the 180 days had expired.**

**Petitioner is in the same situation as an attorney or pro se litigant who settles a case prior to filing suit and then, after collecting the settlement, files the civil suit. Here the Petitioner did exactly what the law requires and encourages, she brought the situation to the attention of the proper department of the company, worked within the company to resolve the situation, and settled the matter without the need of litigation. Now because she did what the law asks, she is barred from pursuing her claim when the Respondent has acted in bad faith throughout the proceedings.**

**If a litigant, or his attorney, had filed a suit after reaching a settlement there is no question that the suit would be dismissed and the party sanctioned under Rule 11. If Petitioner had filed a complaint after reaching a settlement, the same thing would have happened. The EEOC and the courts would have dismissed the complaint.**

**If the law is going to continue to require victims to have to go through the EEOC and the various human resources regulations of the companies, then the victims must have a remedy when the company acts in bad faith and violates the terms of any agreements or promises. The bad faith actions of the company cannot act as a barr to victims of sexual**

**harassment.**

**2. Whether the company's action in reasserting the same complaints and allegations covered in the settlement with the employee on sexual harassment matters constitutes a new act of sexual harassment enabling the employee to proceed and incorporate the original complaints.**

**For much the same rationale as set forth in the preceding portion of this petition, if the company is the one to revive the subjects that are part of the original sexual harassment complaint, then the actions of the company must be considered as a new act of sexual harassment and subject to the 180 day rule.**

**Petitioner claims that Respondent violated Title VII by subjecting her to both quid pro quo and hostile environment sexual harassment.**

**To establish a *prima facie* case of quid pro quo sexual harassment, an employee must prove: (1) that she belongs to a protected group; (2) that she was subjected to unwelcome sexual harassment; (3) that the harassment was based on sex; and (4) that her reaction to the harassment affected aspects of her compensation, terms, conditions or privileges of employment. Fowler v. Sunrise Carpet Industries, 911 F.SUPP., 1560, 1575 (N.D. Ga. 1996) (citing Sparks v. Pilot Freight Carriers, 830 F.2d 1554, 1556 (11th Cir. 1987). Moreover, the acceptance or rejection of the harassment**

**by an employee must be an express or implied condition to the receipt of a job benefit or the cause of a tangible job detriment in order to create (quid pro quo sexual harassment) liability." Farley, 115 F.3d at 1552 (quoting Henson, 682 F.2d at 909).**

**There is no question that Petitioner belongs to a protected group.**

**The constant encouragement to drink and party with the guys is a form of quid pro quo sexual harassment. It is clear that under Corley the women sales reps were treated as second class citizens. The women, including Appellant, were constantly pressured to loosen up and socialize with the guys. The women were required to attend social functions (dinners, Christmas parties, etc.) And to serve as dance partners for the males. During business meetings where attendance was mandatory, the women were required to arrive the day before and to go out to dinner with Stamboulieh. While at dinner they (the women sales reps) would be referred to as "George's harem." The business meetings were filled with inappropriate and offensive sexual comments and dirty jokes by the male co-workers and management. Women sales reps were subjected to invitations to attend strip clubs as part of this socializing, and when they refused, they had to listen to graphic comments during the next day's meeting as to the strippers' body parts, talent and other such offensive remarks.**

**Requiring the female reps to attend a party at the motel where male co-workers were**

**engaged with the strippers in a lingerie show is clearly offensive and inappropriate. However, the Respondent claims that all of this occurred outside of the 180 day period, the lower courts agreed and dismissed the case.**

**Petitioner respectfully suggests that the facts of this case are directly contrary to this finding, but even if this was the case, the actions by Conder-Flannery, and Collins were but a continuation of conduct by the Respondent that continued a hostile sexual work environment.**

**Hostile work environment sexual harassment "occurs when the employer or agent's conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive environment." Fleming v. Boeing Co., 120 F.3d 242, 245 (11th Cir. 1997) (citing Steele, 867 F.2d at 1315 (quoting Vinson, 477 U.S. at 65, 106 S.Ct. 2405)) (internal quotations omitted). To establish a claim of hostile work environment sexual harassment, Appellant must show that (1) she is a member of a protected group; (2) she was subjected to unwelcome sexual harassment; (3) the harassment complained of was based on sex; (4) the harassment complained of affected a term, condition, or privilege of employment; and (5) respondeat superior. Henson, 682 F.2d at 903-905; McCoy v. Macon Water Authority, 966 F.SUPP. 1209, 1217-18 (M.D.Ga. 1997).**

**To hold an employer directly liable under Title VII for a hostile environment created by a**

supervisor, an Appellant must prove that the employer knew or should have known of the harassment and failed to take prompt remedial action. Reynolds v. CSX Transportation, 115 F.3d 860, 866 (11th Cir. 1997); Faragher, 111 F.3d at 1538; Kilgore v. Thompson & Brock Management, Inc., 93 F.3d 752-753-754 (11th Cir. 1996); Henson, 682 F.2d at 905 (11th Cir. 1982); McCoy 966 F.SUPP. at 1218. The employee can show that the employer knew of the harassment by proving that she complained to higher management. Reynolds, 115 F.3d at 866 (citing Faragher, 111 F.3d at 1538).

Did the Respondent have notice of the problems with Stamboulieh and Corley? Again the answer is "of course they did." If not before, the Respondent was certainly put on notice in November of 1993 when served with the Ridgway suit. That case clearly outlines the serious sexual harassment problems within the Corley sales division, but the company did nothing about it.

When Petitioner had her meeting with Corley, Stamboulieh and Collins, she expressed her concerns about sexual harassment. The Respondent contends that Petitioner did not raise this issue at the meeting, but Collins' own self-serving memo refers to sexual harassment on at least three different topics. In Collins' memo titled "Linda's Issues" issue number one is that there is a different standard for women than men. Several of the examples cited deal with the sexual harassment issues. These were the issues supposedly settled by the transfer

**and promises of no further harassment or sexual discrimination.**

**Rather than keep its promises and act in good faith, the Respondent continued to forced the Petitioner to work in a sexually hostile work environment, and the actions of Conder-Flannery, and Collins must be considered to be a continuing act of sexual harassment such that the 180 day rule has been met by the Petitioner.**

---

## CONCLUSION

**The petitioner herein did what the law would like everyone to do. She tried to work within the company to resolve a serious problem. She relied, in good faith, on the promises of the Respondent that it was taking the necessary steps to resolve the problem. When it became clear that the company was not acting in good faith and had no intention of honoring its word, the Petitioner filed her complaint with EEOC as required.**

**Companies must not be allowed to avoid the liability for sexual harassment by simply making empty promises to their employees as an effort to stall past the 180 rule. Where the company's actions revived the sexual harassment complaint, that action, whatever it may be, must be considered to be a new act of sexual harassment that triggers the running of a new 180 days.**

**Respectfully submitted,**

**Clifford H. Hardwick**
**Attorney for Petitioner**

**Roswell Professional Park**
**11205 Alpharetta Highway**
**Building E, Suite One**
**Roswell, Georgia 30076-1442**

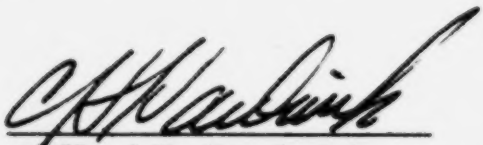
**(770) 772-4700**

**CERTIFICATE OF SERVICE**

**This is to certify that I have this day served counsel for the Respondent with three true copies of the foregoing Petition For Writ Of Certiorari by depositing same in the U.S. Mail, with proper postage affixed thereto, and addressed as follows:**

**Mr. Stephen M. Brooks**
**Mr. Stephen M. Lore**
**Smith, Helms, Mulliss & Moore, LLP**
**1355 Peachtree Street, N.E.**
**Suite 750**
**Atlanta, Georgia 30309**

**This the 24th day of October, 2000.**



**Clifford H. Hardwick**
**Attorney for Petitioner**
**Georgia Bar No. 325675**

**Roswell Professional Park**
**Suite E-1**
**11205 Alpharetta Highway**
**Roswell, Georgia 30076-1442**

**(770) 772-4700**